

Summary: The Defendant filed a motion to appoint counsel, arguing that counsel is necessary for his 28 U.S.C. § 2255 motion because he does not have sufficient access to the law library and he is not capable of assisting in his own defense. The Court denied the motion, finding that there is not a constitutional or statutory right to counsel in habeas proceedings, that the interests of justice do not require the appointment of counsel, and that neither the claims nor the facts giving rise to them appear to be complex.

Case Name: USA v. Melvin Troy Twoshields

Case Number: 1-06-cr-19

Docket Number: 94

Date Filed: 12/9/08

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER DENYING DEFENDANT'S
)	MOTION TO APPOINT
vs.)	COUNSEL
)	
)	Case No. 1:06-cr-019
Melvin Troy Twoshields,)	
)	
Defendant.)	
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)	
Melvin Troy Twoshields,)	
)	
Petitioner,)	
)	
vs.)	Case No. 1:08-cv-081
)	
United States of America,)	
)	
Respondent.)	
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Before the Court is the Defendant's "Motion to Appoint Counsel to Assist in 28 U.S.C. § 2255 Proceedings" filed on December 8, 2008. See Docket No. 88. The Government filed a response in opposition to the motion on December 8, 2008. See Docket No. 93.

On July 14, 2008, the defendant, Melvin Troy Twoshields, filed a motion to appoint counsel and a motion for an extension of time to file a habeas corpus motion under 28 U.S.C. § 2255. See Docket Nos. 66, 67. Twoshields contended in his original motion that counsel is necessary because his attorney withdrew from the case, he has a low I.Q., he is mentally incompetent, and he has trouble understanding the law. See Docket No. 66. The Court denied that motion to appoint counsel. See Docket No. 72. On September 22, 2008, Twoshields filed a 28 U.S.C. § 2255 motion. See Docket No. 78. In the motion to appoint counsel now before the Court, Twoshields contends that he does not have sufficient access to the law library and that he is not capable of assisting in his own defense. See Docket No. 88. The analysis the Court used in denying Twoshields' previous motion to appoint counsel is equally applicable to this motion.

There is neither a constitutional nor statutory right to counsel in habeas proceedings. See Morris v. Dormire, 217 F.3d 556, 558 (8th Cir. 2000); Blair v. Armontrout, 916 F.2d 1310, 1332 (8th Cir. 1990); see also Boyd v. Groose, 4 F.3d 669, 771 (8th Cir. 1993) (explaining that a habeas corpus proceeding is a civil proceeding to which the Sixth Amendment right to counsel afforded for criminal proceedings does not apply). However, the Court may appoint counsel for a habeas petitioner at any time if it finds that the "the interests of justice so require." See 18 U.S.C. § 3006A(a)(2). If a court conducts an evidentiary hearing on the petition, the interests of justice require that the petitioner be appointed counsel. See Rule 8(c), Rules Governing Section 2255 Cases in the United States District Courts; see also Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994).

“If no evidentiary hearing is necessary, the appointment of counsel is discretionary.” Abdullah, 18 F.3d at 573.

When exercising its discretion, a court should determine whether, given the particular circumstances of the case, “the appointment of counsel would benefit the petitioner and the court to such an extent that ‘the interests of justice so require’ it.” Id. (citing 18 U.S.C. § 3006A(a)(2) and Battle v. Armontrout, 902 F.2d 701, 702 (8th Cir.1990)). Thus, a court should consider a number of relevant factors, including the factual complexity of the case and the petitioner’s ability to investigate and present his claim. See Abdullah, 18 F.3d at 573; see also Battle, 902 F.2d at 702.

The interests of justice do not require the appointment of counsel for Twoshields at this stage of the proceedings and there is no necessity for an evidentiary hearing at this time. Moreover, although Twoshields raises a myriad of claims in his petition for habeas corpus relief, neither the claims nor the facts giving rise to them appear to be complex. Consequently, Twoshields’ motion to appoint counsel (Docket No. 88) is **DENIED** without prejudice.

IT IS SO ORDERED.

Dated this 9th day of December, 2008.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court